

Hearing Date:
January 4, 2001
at 10:00 a.m.

Gerald C. Bender (GB-5849)
Lawrence A. First (LF-9650)
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)
Attorneys for Debtors
and Debtors-in-Possession
One New York Plaza
New York, New York 10004
(212) 859-8000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -	x	
	:	
In re:	:	Chapter 11
	:	Case Nos. 00 B 41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	:	through 00 B 41196 (SMB)
CENTERS, INC., <u>et al.</u> ,	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
- - - - -	x	

NOTICE OF MOTION WITH RESPECT TO MOTION FOR
ORDER PURSUANT TO SECTION 365(d)(4) OF THE
BANKRUPTCY CODE EXTENDING THE TIME WITHIN
WHICH THE DEBTORS-IN-POSSESSION MUST ELECT
TO ASSUME OR REJECT THEIR UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY

PLEASE TAKE NOTICE that, on December 20, 2000, the
above-captioned debtors and debtors-in-possession (the "Debtors")
filed with the United States Bankruptcy Court for the Southern
District of New York (the "Court") their motion for an order
pursuant to section 365(d)(4) of title 11 of the United States
Code (the "Bankruptcy Code") extending the time within which the
Debtors must elect to assume or reject each of their unexpired
leases of nonresidential real property (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion and any objections thereto will be held on January 4, 2001, at 10:00 a.m., Eastern Time (the "Hearing Date"), before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408.

PLEASE TAKE FURTHER NOTICE that objections to the relief requested in the Motion, if any, must state the basis for the objection and be (i) in writing, (ii) filed with the Court, and (iii) served upon (a) Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, New York 10004 (Attn: Gerald C. Bender, Esq.), (b) the Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004 (Attn: Brian Masumoto, Esq.) and (c) Berlack, Israels & Liberman, LLP, 120 West 45th Street, New York, New York 10036 (Attn: Erica Ryland, Esq.), together with proof of service thereof, such that they are received at least three days prior to the Hearing Date.

Unless objections are timely received, the relief requested in the Motion may be granted.

Dated: New York, New York
December 20, 2000

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)
Counsel for the Debtors and Debtors-
in-Possession
One New York Plaza
New York, New York 10004-1980
(212) 859-8000

By: /s/ Gerald C. Bender
Gerald C. Bender (GB-5849)

Hearing Date:
January 4, 2001
at 10:00 a.m.

Gerald C. Bender (GB-5849)
Lawrence A. First (LF-9650)
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)
Attorneys for Debtors
and Debtors-in-Possession
One New York Plaza
New York, New York 10004
(212) 859-8000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -	x
	:
In re:	:
	:
	:
RANDALL'S ISLAND FAMILY GOLF	:
CENTERS, INC., <u>et al.</u> ,	:
	:
Debtors.	:
	:
- - - - -	x

MOTION FOR ORDER PURSUANT TO
SECTION 365(d)(4) OF THE BANKRUPTCY
CODE EXTENDING THE TIME WITHIN WHICH
THE DEBTORS-IN-POSSESSION MUST ELECT
TO ASSUME OR REJECT THEIR UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession
(collectively, the "Debtors"), for their motion for an order
pursuant to section 365(d)(4) of title 11 of the United States
Code (the "Bankruptcy Code") extending the time within which the
Debtors must elect to assume or reject each of their unexpired

leases of nonresidential real property (the "Motion"),
respectfully state as follows:

Introduction

1. By this Motion, the Debtors seek entry of an order extending the time within which they must assume or reject all of their unexpired leases of nonresidential real property, including, without limitation, the leases listed on Exhibit A attached hereto, for approximately 90 days, from January 8, 2001 through April 9, 2001.

2. The Debtors are currently party to approximately 70 unexpired leases of nonresidential real property (the "Leases").¹ The Leases, and the business operations conducted at the leased premises, are the core of the Debtors' business. As part of the Debtors' ongoing effort to develop a strategic business plan, the Debtors have determined to assume and assign certain Leases and to reject other Leases, and are continuing to evaluate their remaining Leases and properties

3. In connection with the Debtors' efforts to dispose of certain under-performing facilities and focus on rebuilding the core of their business, the Debtors recently received authorization from the Court to reject sixteen Leases (including

¹ The Debtors are party to concession and management agreements with respect to certain of their facilities. The Debtors do not believe that these concession and management agreements are "leases", as that term is used in section 365 of the Bankruptcy Code. Out of an abundance of caution, however, and to protect the Debtors' estates in the event that it is later determined that these agreements are considered "leases" for purposes of section 365 of the Bankruptcy Code, the Debtors request that the relief sought herein be applicable to these agreements.

one management agreement and one concession license) and to assume and assign seven leases to Klak Golf, LLC. In addition, the Debtors are in the process of terminating the leases for their properties in Janesville, Wisconsin and Williamsville, New York and are seeking to assign the lease for their property in Encino, California.

4. While the Debtors have made substantial progress with respect to the disposition of certain of their Leases, additional time is needed to evaluate the performance of their remaining locations. Furthermore, as this Court is aware, the Debtors have undergone a transition in its senior management. As part of this transition, the new management requires an opportunity to implement its own strategies and determine which of the remaining Leases are most beneficial to the Debtors and their estates.

5. As a result of these events, the Debtors request that their time to assume or reject the Leases be extended. If the Debtors' time to assume or reject the Leases is not extended for the additional time requested herein, the Debtors may be compelled, prematurely, to assume substantial, long-term liabilities under the Leases or forfeit benefits associated with the Leases. Consequently, the Debtors' efforts to preserve the going-concern value of their businesses for the benefit of their creditors and other parties-in-interest and, ultimately, implement a viable plan of reorganization would be in vain. To prevent this unintended and unwanted result, the Debtors are seeking an extension of the time within which they must elect to

assume or reject the Leases from January 8, 2001 through April 9, 2001.

Background

6. On May 4, 2000 (the "Filing Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By order of this Court dated as of the Filing Date, the Debtors' chapter 11 cases are being jointly administered. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession.

7. The Debtors operate golf, ice skating and family entertainment centers throughout North America. As of the Filing Date, the Debtors owned and/or operated 100 golf facilities and 17 ice skating and family entertainment centers.

8. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), in that it is a matter concerning the administration of the Debtors' estates.

9. On July 27, 2000, this Court entered an order extending the time within which the Debtors must elect to assume or reject each of their unexpired leases of nonresidential real property through October 9, 2000. On October 24, 2000, this Court entered an order further extending the time within which the Debtors must elect to assume or reject each of their unexpired leases of nonresidential real property through January 8, 2001.

Need for Relief

10. Section 365(d)(4) of the Bankruptcy Code provides that unexpired leases of nonresidential real property shall be deemed rejected if they are not assumed or rejected within 60 days of the date of the order for relief, or within such additional time as the court (for cause, within such 60-day period) fixes. Accordingly, the Debtors 60-day time period to assume or reject the Leases was scheduled to expire on July 3, 2000. However, because the Debtors were compelled during the first 60 days of these chapter 11 cases to focus their efforts almost exclusively on stabilizing operations, obtaining approval of postpetition financing and dealing with a myriad of other pressing matters, the Debtors required and sought an extension of time to analyze the Leases and to avoid what would be either a premature assumption or rejection of the Leases. Thus, by order dated July 27, 2000, this Court extended the Debtors' deadline to assume or reject its Leases to October 9, 2000.

11. Since that time, the Debtors and their professionals have concentrated their efforts on assuming and assigning certain Leases and rejecting other Leases. The Debtors have sought and received authorization, by orders dated December 4 and 5, 2000, to reject fourteen Leases, one management agreement and one concession license and to assume and assign seven Leases to Klak. These efforts are indicative of the Debtors' substantial progress in analyzing their businesses and paring down non-core and/or unprofitable operations and disposing of Leases.

12. In addition, the Debtors have undergone a transition in their senior management. As a result, additional time is needed for the new management to evaluate the Debtors' remaining Leases and decide whether to assume or reject the Leases. The Debtors' future decisions to assume or reject a particular Lease, and the timing of such assumption or rejection, depends primarily on whether the Debtors will continue operations at the location that relates to the Lease once the new management has had an opportunity to evaluate the performance of the remaining locations and develop a strategic business plan.

13. The Debtors have received, and may continue to receive, offers for various of their remaining businesses and properties. The Debtors and their new management need to consider these offers, and others that may come in. The Debtors and their new management are also continuing to analyze the performance of each of their remaining properties and businesses in an effort to determine their value in relation to the continuation or disposition of such businesses and properties.

14. Only after the new management has had an opportunity to evaluate the progress of the Debtors' remaining locations and fully develop a strategic business plan will the Debtors be able to determine whether to assume or reject the balance of the Leases. Accordingly, it is not yet possible to determine whether certain of these locations will remain a part of the Debtors' operations. Such decisions cannot be made properly and responsibly without an extension of the time within which such Leases must either be assumed or rejected.

Request for Relief

15. By this Motion, the Debtors seek an order, pursuant to section 365(d)(4) of the Bankruptcy Code, granting the Debtors an extension of the time within which the Debtors must elect to assume or reject the Leases from January 8, 2001 through April 9, 2001. The Debtors additionally request that such extension of time be without prejudice to the Debtors' right to seek further extensions of such time and without prejudice to the right of any lessor to obtain an order requiring the Debtors to assume or reject a particular lease in a shorter time, upon a showing of good cause.²

Applicable Authority

16. Section 365(d)(4) of the Bankruptcy Code provides, in pertinent part, as follows:

(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60 day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

2

This provision, which is intended to be a benefit to lessors if the Motion is granted, should not be confused with an effort to change the Debtors' burden of proof on the Motion. The Debtors understand that they have the burden of proof on the Motion, and expect to meet that burden.

17. Upon a showing of cause by a debtor, courts may grant, and in larger cases have routinely granted, extensions of the assumption or rejection time period. See South St. Seaport L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 761 (2d Cir. 1996) (affirming extensions of time to assume or reject a lease when cause is established); In re 611 Sixth Ave. Corp., 191 B.R. 295, 298 (Bankr. S.D.N.Y. 1996) (extension of 60 days may be granted if the debtor makes a timely motion and establishes cause); Edward J. DeBartolo Corp. v. Child World, Inc. (In re Child World, Inc.), 147 B.R. 854, 854 (S.D.N.Y. 1992) (affirming extension of the debtor's time to assume or reject leases); In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987) (extension of time to assume or reject a lease granted as cause had been shown); cf. In re Klein Sleep Products, Inc., 78 F.3d 18, 27-29 (2d Cir. 1996) (suggesting that the risk and attendant liability of an erroneous decision to assume a lease justifies a delay in requiring a debtor to assume or reject a lease until confirmation).³

18. Although section 365(d)(4) is silent as to whether a court may grant more than one extension of the assumption or rejection time period, courts have overwhelmingly held that multiple extensions may be granted. See In re American

³ Other circuits hold similarly: Legacy, Ltd. V. Channel Home Ctrs. (In re Channel Home Ctrs.), 989 F.2d 682, 688-89 (3d Cir. 1993) (affirming second section 365(d)(4) extension to allow debtor to evaluate unexpired leases); In re American Healthcare Management, 900 F.2d 827, 830 (5th Cir. 1990) (affirming third extension); In re Victoria Station, Inc., 875 F.2d 1380, 1384-85 (9th Cir. 1989) (affirming second extension).

Healthcare Management, Inc., 900 F.2d 827, 830 (5th Cir. 1990) ("a bankruptcy court may grant multiple extensions of the time in which a lessee must assume or reject its leases of nonresidential real property"); Legacy Ltd. v. Channel Home Centers, Inc. (In re Channel Home Centers, Inc.), 989 F.2d 682, 688 (3d Cir. 1993) (rejecting theory that section 365(d)(4) provided for a single extension); Collier on Bankruptcy § 365.04[3][d][i], at 365-37 (Lawrence P. King ed., 15th rev. ed. 2000) (observing that the "court's approach in American Healthcare Management is consistent with good policy as well as with the apparent trend in cases").

19. In determining whether cause exists for an extension of the time within which to assume or reject unexpired leases, courts have relied on several factors, including the following:

- (i) whether the case is complex and involves a large number of leases;
- (ii) whether the leases are primary among the assets of the debtor;
- (iii) whether a debtor needs more time to analyze its leases in light of the plan it is formulating; and
- (iv) whether the lessor continues to receive postpetition rental payments.

See In re Burger Boys, Inc., 94 F.3d at 761; In re Wedtech Corp., 72 B.R. at 471-72; In re 611 Sixth Ave. Corp., 191 B.R. at 298; In re Channel Home Centers, Inc., 989 F.2d at 689; Theatre Holdings Corp. v. Mauro, 681 F.2d 102 (2d Cir. 1982). In the present case, the Debtors have satisfied all of these requirements.

20. First, these chapter 11 cases are large and complex. As of the Filing Date, the Debtors operated 100 golf facilities and 17 ice skating and family entertainment centers across the country and was a party to more than 90 leases. Second, the Leases are among the primary assets of the Debtors; without them, the Debtors' business operations and services would not have an underlying infrastructure on which to exist. Third, the Debtors' ability to formulate a strategic business plan and, ultimately, implement a viable plan of reorganization would be impaired if the Debtors were forced to assume or reject the Leases at this point in time, particularly in light of the recent management transition and disposition of a number of Leases. Finally, the Debtors are current on all of their postpetition rent obligations, and will continue to comply with the requirements of section 365(d)(3) of the Bankruptcy Code during any extension granted by this Court.

Best Interests of the Estate

21. The requested extension is in the best interest of the Debtors, their estates and their creditors. Absent an extension of the time to assume or reject the Leases, the Debtors will be forced to make a determination regarding the Leases without the opportunity to make a prudent determination whether assumption or rejection is warranted. Such a result puts the Debtors at risk of either assuming Leases prematurely, and thereby creating unnecessary administrative expense claims, or rejecting Leases that could prove to be valuable, either for

operations or because such Leases could be profitably assumed and assigned. Therefore, the requested extension is in the best interest of the Debtors, their estates and their creditors.

Notice

22. No trustee or examiner has been appointed in connection with the Debtors' chapter 11 cases. The Debtors have provided notice of this Motion to (i) the Office of the United States Trustee; (ii) Berlack, Israels & Liberman, LLP, counsel to the Official Committee of Unsecured Creditors; (iii) Morgan, Lewis & Bockius, LLP, counsel to The Chase Manhattan Bank, as Agent; (iv) each landlord under the Leases; and (v) all other parties who have filed a notice of appearance and/or requested notice in these chapter 11 cases. The Debtors believe that such notice is appropriate under the circumstances of this Motion and that any additional notice would not warrant the expense. Accordingly, the Debtors respectfully request that any and all other and further notice be dispensed with and waived.

Waiver of Memorandum of Law

23. Given the nature of the relief requested in this Motion, the Debtors respectfully request that this Court dispense with and waive the requirement for submission of a memorandum of law contained in Local Rule 9013-1(b).

Prior Requests

24. On June 16, 2000, the Debtors filed a motion with this Court requesting the entry of an order extending the time within which the Debtors must elect to assume or reject each of their unexpired leases of nonresidential real property. On July

27, 2000, this Court entered an order extending the time period until October 9, 2000. On September 22, 2000, the Debtors filed a motion with this Court requesting the entry of an order further extending the time within which the Debtors must elect to assume or reject each of their unexpired leases of nonresidential real property. On October 24, 2000, this Court entered an order extending the time period until January 8, 2001.

WHEREFORE, the Debtors request entry of an order, substantially in the form of Exhibit B attached to this Motion, extending the time within which the Debtors must elect to assume or reject the Leases from January 8, 2001 through April 9, 2001, and granting such other and further relief as is just and proper.

Dated: New York, New York
December 20, 2000

FRIED, FRANK, HARRIS, SHRIVER &
JACOBSON
(A Partnership Including
Professional Corporations)
Counsel for Debtors and
Debtors-in-Possession
One New York Plaza
New York, New York 10004
(212) 859-8000

By: /s/ Gerald C. Bender
Gerald C. Bender (GB-5849)

355171